

## **SETTLEMENT AGREEMENT**

### **I. PARTIES**

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively the “United States”); and Leonard Ginsburg, M.D., Moore Eye Care, PC; Retina and Diabetic Eye Specialists, PC d/b/a, Retina and Diabetic Eye Institute, The Moore Eye Institute, The Moore Eye Foundation and Eye Services MSO, Inc., (collectively “Ginsburg”); the qui tam Relator, Maryann Gola (“Relator”), (hereafter referred to as “the Parties”), through their authorized representatives.

### **II. PREAMBLE**

As a preamble to this Agreement, the Parties agree to the following:

A. Leonard Ginsburg, MD, is a licensed physician who specializes in the practice of ophthalmology. His office, as well as The Moore Eye Institute, Eye Services MSO, Inc., is located at Suites 100 and 125, 100 West Sproul Road, Springfield, PA 19064. Dr. Ginsburg is the sole owner of The Moore Eye Institute and runs the practice. The Moore Eye Foundation is a non-profit corporation incorporated to promote and advance knowledge of and care for eye diseases with research, education and indigent care.

B. The United States contends that Ginsburg submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg.

C. On July 14, 2000, the Relator filed a qui tam Complaint under seal, alleging violations of the False Claims Act, 31 U.S.C. §§ 3729-3733, by Ginsburg in a case docketed at Civ. No. 00-3564 (E.D. Pa.) (the “Civil Action”). Thereafter, the United States investigated the allegations raised in the qui tam action and is prepared to intervene, contending that it has certain civil monetary claims against Ginsburg under the False Claims Act, other

federal statutes and/or common law doctrines, for engaging in the following conduct during the period from May 1, 1990 to December 31, 2002: soliciting and engaging in relationships with Mercy Community Hospital and Brandywine Hospital, wherein Mercy Community Hospital and Brandywine Hospital provided space, equipment, personnel, supplies, director fees and other services to Ginsburg, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and the “Stark” law, 42 U.S.C. § 1395nn, and submitted and caused to be submitted claims for reimbursement to Federal healthcare programs in connection therewith. The allegations in the Civil Action, Ginsburg’s financial relationship with Springfield Hospital and the United States’ contentions described above are hereinafter referred to as the “Covered Conduct”.

D. Ginsburg does not admit the contentions of the United States as set forth in Paragraph C, above, and to the contrary, contends that his conduct was at all times lawful and appropriate.

E. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

### **TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Ginsburg agrees to pay to the United States the sum of Two Hundred Thousand Dollars (\$200,000.00) (the “Settlement Amount”), as follows: Ginsburg agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney. Ginsburg agrees to make two installment payments of \$100,000.00, with the first installment due 14 days after the effective date of this Agreement, and the second installment due six months after the effective date of this

Agreement.

2. The United States and Ginsburg agree that Ginsburg shall retain an appropriately qualified Consultant to assess Ginsburg's obligations under 42 U.S.C. § 1320c-5. Ginsburg shall take all reasonable steps to retain the Consultant and execute a Consulting Agreement within sixty (60) days, and in no event later than ninety (90) days from the effective date of the Settlement Agreement. Both the identity of the Consultant and the terms of the Consulting Agreement shall be subject to the approval of the United States, and the approval of the Consultant by the United States shall not be unreasonably withheld. The Consultant may be removed at the sole discretion of the United States. If the Consultant resigns or is removed for any reason, Ginsburg shall hire another Consultant, after preapproval by the United States, who shall have the same functions, responsibilities, and authority. The term of the Consulting Agreement shall be one (1) year from the date of the initial conference provided for in the Consulting Agreement unless the United States determines that there are material issues relating to Ginsburg's compliance with the provisions of the Consulting Agreement and/or the provision of services in accordance with 42 U.S.C. § 1320c-5 that necessitates extension of the Consulting Agreement.

3. The parties agree that Ginsburg's failure to retain the Consultant in a timely fashion, pay the Consultant in a timely manner, or interfere with the Consultant's obligations or ability to carry out his or her functions, or violate the Consulting Agreement in any way, shall constitute a breach of this Settlement Agreement and subject Ginsburg to the provisions contained in paragraph 6 of this Settlement Agreement.

4. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations of Ginsburg set forth in this Agreement, conditioned upon Ginsburg's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and

departments) agrees to release Ginsburg together with his current and former parent corporations, current owners, current officers, current directors, current employees and the successors and assigns of any of them from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; “Stark” law, 42 U.S.C. § 1395nn; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

5. In consideration of the obligations of Ginsburg set forth in this Agreement, conditioned upon Ginsburg’s payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Ginsburg under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 6, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Ginsburg from the Medicare, Medicaid or other Federal health care program under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 6, below.

6. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Ginsburg) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S.

Code (Internal Revenue Code);

- (2) Any criminal liability;
- (3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- (5) Any claims based upon such obligations as are created by this Agreement, including those created by the Integrity Agreement referred to in Paragraph 7 below;
- (6) Any claims based on a failure to deliver items or services due;
- (7) Any civil or administrative claims against individuals, including former directors, officers, employees, agents or shareholders of defendant Ginsburg who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

7. Ginsburg has entered into an Integrity Agreement (IA) with HHS-OIG, which is incorporated into this Agreement and attached as Exhibit A. Immediately upon execution of this Agreement, the IA will take effect.

8. In the event that Ginsburg fails to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of Ginsburg's representations or warrants be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- (a) seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in its favor; or

(b) exercise any other right granted by law.

9. Ginsburg waives and will not assert any defenses Ginsburg may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution or administrative action. Ginsburg agrees that this settlement is not punitive or a penalty in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

10. Ginsburg fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Ginsburg has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. The United States will, pursuant to 31 U.S.C. § 3730(d)(1), pay the Relator her share of each payment of the Settlement Amount made to it, within a reasonable time of its receipt of same from Ginsburg. The United States has no obligation to disburse any monies to the Relator unless and until the United States receives the Settlement Amount from Ginsburg. Ginsburg's payment to the Relator of the Relator's attorneys' fees and costs, as required by 31 U.S.C. § 3730(d), will be resolved by separate agreement between the Relator and Ginsburg, or by Court Order.

12. The Relator and Ginsburg agree that the Relator's Share and the Relator's attorneys' fee, referenced in Paragraph 11, above, when the latter is resolved by separate

agreement or by Court Order, shall be in full satisfaction of all claims, known or unknown, that the Relator and each of her heirs, successors, assigns, attorneys and agents may have against Ginsburg and its partners, affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, transferees, attorneys and each of their current or former directors, officers, and employees, on account of her initiation of the Civil Action, or any other theory, and is inclusive of all claims the Relator, her successors and assigns, or their counsel may have for attorneys' fees, costs and expenses in connection with the Civil Action or any other theory. For and in consideration of such payment, the Relator, for herself, her heirs, successors, and assigns, attorneys and agents release and forever discharge Ginsburg, and each of its partners, parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees, attorneys and each of their current or former directors, officers, and employees, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, in law or in equity, whether or not known or suspected at this time, which they ever had, owned or held or hereafter can, shall or may have against Ginsburg either in an individual, qui tam, or representative capacity.

13. Ginsburg and each of its partners, parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees, attorneys and each of its current or former directors, officers and employees, release and forever discharge Relator, and each of her heirs, successors, assigns, attorneys and agents, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, whether or not known or suspected at this time, which Ginsburg, and each of its parents, partners, affiliates, divisions, subsidiaries, predecessors,

successors, assigns, transferees, attorneys and each of their current or former directors, officers and employees, ever had, owned or held or hereafter can, shall or may have against the Relator.

14. Relator agrees to release the United States, its officers, agents and employees, from any liability arising from the filing of the Civil Action, including any claims to a share of the proceeds pursuant to 31 U.S.C. § 3730(d), subject to her receipt of the Relator Share, as described in Paragraph 11.

15. The Amount that Ginsburg must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment to the extent, if any, that such claims are now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and Ginsburg agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. Ginsburg agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf on Ginsburg, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the Covered Conduct,

(2) the United States' audit(s) and civil investigations(s) of the Covered Conduct,

(3) Ginsburg's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and civil investigation(s) in connection



with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement,

(5) the payment Ginsburg makes to the United States pursuant to this Agreement and any payments that Ginsburg may make to Relators, and

(6) the negotiation of the IA, and the obligations undertaken pursuant to the IA to retain a Legal IRO and to prepare and submit reports to the OIG-HHS, and the Consultant appointed pursuant to Paragraph 2, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority applicable to Ginsburg. (All costs described or set forth in this Paragraph 14(a) are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by Ginsburg, and Ginsburg will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Ginsburg or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Ginsburg further agrees that within 90 days of the effective date of this Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information

reports, or payment requests already submitted by Ginsburg or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Ginsburg agrees that the United States, at a minimum, will be entitled to recoup from Ginsburg any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment. Any payment due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Ginsburg or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Ginsburg or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

17. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

18. Ginsburg agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Ginsburg waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

19. Ginsburg expressly warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous

exchange for new value given to Ginsburg, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

20. With the exception of the Relator's attorneys fees as described in Paragraph 10, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

21. Ginsburg and the Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania, except that where a dispute arises regarding the Integrity Agreement, such dispute shall be resolved pursuant to the provisions of the Integrity Agreement.

23. The Relator and the United States agree that they will dismiss with prejudice the qui tam action captioned at Civ. No. 00-3564 (E.D. Pa.), and any other qui tam action brought by Relator, and the Relator and Ginsburg agree that all such actions shall remain under seal.

24. With the exception of the Settlement and Release Agreement between the Relator and Ginsburg, this Agreement and the Integrity Agreement which is incorporated by reference, constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Ginsburg and OIG-HHS must agree in writing to modification of the Integrity Agreement, pursuant to the Integrity Agreement.

25. The undersigned individuals signing this Agreement on behalf of Ginsburg represent and warrant that they are authorized by Ginsburg to execute this Agreement. The

undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

27. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN  
United States Attorney  
Eastern District of Pennsylvania

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
JAMES G. SHEEHAN  
Associate United States Attorney  
United States Attorney's Office  
Eastern District of Pennsylvania

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
DAVID R. HOFFMAN  
Assistant United States Attorney  
Eastern District of Pennsylvania

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LARRY GOLDBERG  
Assistant Inspector General for  
Legal Affairs  
Office of Inspector General  
United States Department of  
Health and Human Services

LEONARD GINSBURG, MD, MOORE EYE CARE, PC; RETINA AND DIABETIC EYE SPECIALISTS, PC d/b/a, RETINA AND DIABETIC EYE INSTITUTE, THE MOORE EYE INSTITUTE, THE MOORE EYE FOUNDATION and EYE SERVICES MSO, INC.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LEONARD GINSBURG, MD

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ERIC SITARCHUK, ESQ.

RELATOR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
MARYANN GOLA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
HOWARD BRUCE KLEIN, ESQUIRE  
Counsel for Relator

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
BRUCE J. GOLDSTEIN, ESQUIRE  
Counsel for Relator

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